Supreme Court of Pennsylvania.

THE COMMONWEALTH OF PENNSYLVANIA *v.* JOSEPH C. STRODE, EXECUTOR OF CALEB STRODE, DECEASED.

United States stocks and bonds are subject to a state collateral inheritance tax, like other property in similar circumstances.

The opinion of the court was delivered by

WOODWARD, C. J.—The single question is whether our collateral inheritance tax is applicable to that part of the decedent's estate which consisted of bonds of the United States, that were by law exempted from state taxation. And the opinion of the learned judge below is so satisfactory, as to leave very little for us to add.

The mistake of the learned counsel for the plaintiff in error consists, we conceive, in treating this as a tax of the government bonds, when it is really a tax upon a decedent's estate dying without lineal heirs. And it does not help the argument that the bulk of the estate is made up of these bonds, for that estate passed into the hands of the executor for administration, and is taxed in his hands *as an estate*. The law takes every decedent's estate into custody, and administers it for the benefit of creditors, legatees, devisees, and heirs, and delivers the residue that remains, after discharging all obligations, to the distributees entitled to receive it. One of the legal obligations to which every estate that is to go to collateral kindred is subject, is this five per cent. duty to the commonwealth. And it is not until this work of administration is performed, that the right of succession attaches. The distributees may indeed consent to accept certain goods and chattels in specie without conversion, as is frequently done in settlement of estates; but such arrangements nowise affect the theory of the law, that the estate is first to be administered and then enjoyed.

Now this five per cent. tax is one of the conditions of administration, and to deny the right of the state to impose it is to deny the right of the state to regulate the administration of decedents' goods. If an estate consist wholly of federal bonds and is indebted, conversion of them into money is necessary to pay the debts, and nobody would doubt that the sum that remained after payment of debts would be subject to a deduction of five per cent. for the use

of the state. But suppose the federal bonds be used to pay the only indebtedness that exists, and a residue of estate remains for distributees, is it not to pay the collateral inheritance tax? Clearly it must, though it may be less than the aggregate of the bonds. This act operates on the *residue* of the estate after paying debts and charges, and theoretically that residue is always a balance in money. The administration account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bonds or other chattels which may have produced the fund. Therefore, neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against state authority to tax that which federal authority has exempted from taxation, has any application here. The federal government has not prohibited the states from prescribing rules of inheritance and succession to estates of decedents, and it would be grievous mistake of legislation and judicial authority to apply it with such effect.

The judgment is affirmed.

READ, J., dissenting.—The United States bonds which in this case are sought to be subjected to the collateral inheritance tax, were issued under the second section of the Act of Congress of the 25th February 1862, 12 Stat. at L. 345, which provides, that "all stocks, bonds, and other securities of the United States, held by individuals, corporations, or associations, within the United States, shall be exempt from taxation by or under state authority." These words are perfectly clear, and no doubt has been expressed but that this provision is constitutional.

By the Act relating to collateral inheritances, passed the 7th April 1826, and its supplements, which are to be found in Brightly's Purdon under that title, page 148, &c., the legislature of Pennsylvania, before these bonds were in existence, imposed a tax or duty for the use of the commonwealth, of $5 on each and every $100 of the clear value of all estates, real, personal, and mixed, passing from any person who may die seised or possessed of such estate being within this commonwealth, either by will or under the Intestate Laws, or any part of such estate or estates or interest therein, to any person or persons other than to or for the use of

father, mother, husband, wife, children, and lineal descendants. The words "being within the commonwealth" extend to all persons domiciled within this commonwealth at the time of their decease, as well as to estates; and persons having their domiciles in another state, territory, or country, and dying leaving real or personal estates within this commonwealth, the same shall be subject to the payment of the collateral inheritance tax. In order to fix the valuation, a fair and conscionable appraisement of the personal estate of the decedent is to be made by an appraiser appointed by the register of wills, which appraisement is final and conclusive against the commonwealth: Commonwealth *v.* Freedley's Executors, 9 Harris 33. The tax is to be a lien on the property or estate chargeable with it, and the executors and administrators are also made liable for it. These are the provisions applicable to the case before us, and it will be recollected that in all these laws, nine in number, it is uniformly called a tax.

If, therefore, the state had subsequently created a new species of security, and declared that it should be exempt from taxation, it is clear that it would be exempted from the collateral inheritance tax. When, therefore, Congress by its paramount authority created these securities, and declared that they should "be exempt from taxation by or under state authority," the same result must follow.

The collateral inheritance tax is a direct, positive act and exercise of the state taxing power, which is expressly prohibited from reaching these bonds by the congressional declaration of exemption from state taxation of any kind whatever. The tax is a tax only, and cannot be attributed to a supposed despotic power of taking every man's property when he dies, to be exercised by the legislature. I have never heard that the Commonwealth of Pennsylvania claimed the right to confiscate the whole or any part of a man's estate, simply because he was domiciled and died within our borders. It is only a tax laid by the taxing power, and if so, this decision should be reversed.